

## CHAPTER 158.

## SCHOOL FUND AND SCHOOL LANDS.

AN ACT providing for the management of the School Fund, and sale of the School Lands.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That the following are hereby declared to be and remain perpetual funds for common school purposes, of which the annual interest or income only can be appropriated.

School funds established.

1. The five per centum upon the net proceeds of all sales of the public lands in the State of Iowa.

Five per cent.

2. The five hundred thousand acres of land, and all proceeds of the sales thereof which were granted to the State of Iowa, under the eighth section of the act of Congress, passed September the 4th, A. D., 1841, entitled an act to appropriate the proceeds of all sales of public lands and to grant pre-emption rights.

Five hundred thousand acre grant.

3. The proceeds of all sales of intestate estates which escheat to the State by reason of there being no heir.

Intestate.

4. The sixteenth section in each township of the State, or lands selected in lieu thereof.

Sixteenth sect'n

Sec. 2. The following are declared to be and remain temporary funds for common school purposes, to be received and appropriated annually, in the same manner as is the annual interest or income of the perpetual fund.

Temporary funds

1. All forfeitures of ten per cent. per annum, upon the amount of all interest under or by which a greater rate of interest than that authorized by law, is reserved or taken either directly or indirectly, in money, property, or other valuable things.

Forfeitures for usury.

2. The clear proceeds of all fines collected within the several counties of this State for breaches of the penal laws.

Fines.

3. All fines which in the several counties in this State are paid in exemption of, or as an equivalent for military duty.

Military fines.

4. All funds arising from the sales of water crafts, lost goods and estrays.

Lost goods.

Treas'r appor-  
tions the five  
per cent fund.

Sec. 3. The five per centum of the nett proceeds of all sales of the public lands in the State, is hereby made payable to the State Treasurer, whose duty it shall be to apportion the same among the several organized counties of this State, taking into consideration the amount of the permanent school fund already in possession of said counties, so that each county may hold as nearly as may be, an amount of school fund proportionate to its population.

Funds payable to  
Co Treas'r.

Sec. 4. These portions of the permanent fund enumerated in the second, third and fourth sub-divisions of section first of this act, are hereby made payable to the county Treasurer of the different counties in which the lands may be situated, or the proceeds of sales of said escheated estates are to be accounted for by the county Treasurers respectively, to the county Judge.

Temporary funds  
paid over.

Sec. 5. The temporary funds enumerated in section two of this act are hereby made payable to the county Treasurer of the several counties in which they are incurred or arise respectively, which shall be accounted for to the county Judge of said county, who shall apportion the same among the several school districts of said county as provided by law.

Annual appor-  
tionment

Sec. 6. On the first Monday of March annually the State Auditor shall apportion the interest of the permanent school fund, among the several organized counties of this State, in proportion to the number of persons between five and twenty-one years of age in each, and in order to enable him to make such apportionment it is hereby made the duty of the Superintendent of Public Instruction to report to said Auditor on the first Monday of February, annually, the number of such persons in each organized county as shown by the reports from the several county Superintendents.

Co. Judge rep'r's  
interest.

Sec. 7. The county Judge shall annually, on the first Monday of February, make out and transmit to the State Auditor, a report of the amount of interest then in the hands of the Treasurer of said county, also the amount, if any, remaining unpaid.

Sec. 8. The State Auditor shall, immediately after

making the apportionment required in section six of this act, notify the county Judge of each county, of the sum to which his county is entitled by said apportionment, and shall ascertain from the reports of the different county Judges what amount of the income or interest of the permanent school fund as stated in section first of this act, is in the hands of the Treasurer of said county, and if any county shall have less of said mentioned interest or income than said county is entitled to by said apportionment, then the State Auditor shall issue his warrant for the deficiency, which warrant shall be signed by the county Judge of said county, and deposited with the county Treasurer, and charged against him as so much interest or income on the permanent school fund, and shall be authority for the said Treasurer to transfer the amount of said warrant from the State tax in his hands to the interest or income of the permanent school fund, and said warrants shall be received by the State Treasurer as so much State tax, and in case any county shall have an excess of interest or income, then the Treasurer of said county shall pay over said excess to the State Treasurer, which excess shall be received as so much State tax.

Auditor notifies  
of apportion-  
ment.

Balances regula-  
ted.

Excess paid ov'r.

Sec. 9. It shall be the duty of the trustees of the several townships in this State, at as early a day as may be convenient, after township election next succeeding the passage of this act, or after the organization of new townships, and within the period of at most three months thereafter, to proceed to make an examination of the sixteenth section in their respective townships, or lands granted in lieu thereof, and to lay out or cause the same to be laid out and allotted into such parcels as in their judgment may be best to advance the interests of the school fund; and in such allotments conforming as far as may be consistent with the interest of the said fund to the legal sub-divisions of the United States survey, and they shall place a true value upon each parcel, which value shall not be less than at the rate of two dollars and fifty cents per acre.

Sixteenth section  
allotted and ap-  
praised.

Sec. 10. Within thirty days after allotment valuation

**Allotment approved by Judge.** by said township trustees, they shall certify to the county Judge of the proper county, the allotment they have made, together with their valuation of the different parcels respectively; and it shall be the duty of the county Judge, to examine the same, and in case of his approval, to make a record thereof in his office, and in case he disapproves, he shall, within thirty days after the receipt thereof, direct a new allotment or valuation, either or both as the case may seem to require, and on a return of the same to make a record thereof.

**Propriety of sale considered.** Sec. 11. Within three months after such allotment and valuation shall have been completed, returned and made a record of by the county Judge; the county Judge together with the trustees of the township in which the lands are situated, shall meet together and determine on the propriety of offering for sale the said sixteenth section, or some part or parts thereof, or of lands granted in lieu thereof; but no part or portion of the same shall be offered for sale unless with the joint concurrence of the county Judge and two of the said trustees of the township in which the said lands are situated.

**Notice of sale.** Sec. 12. In case the said county Judge, jointly with the said trustees, or any two of them, shall determine upon the propriety of offering for sale all or any of the parcels composing the said sixteenth section, or lands granted in lieu thereof, and shall resolve to offer the same for sale; then it shall be the duty of the county Judge to give at least sixty day's notice, by written or printed advertisements in three public places in the county, and two in the township wherein the land is situated, and shall also publish a similar notice for sixty days previously in a newspaper published in the county, or in an adjoining county, provided any newspaper be published therein, which notice so to be given and published, shall describe the land to be sold and state the time and place of sale, then at such time and place, or to such other to which adjournment shall be had; he shall offer the same to the highest bidder, subject to the provisions of this act, and shall sell upon the following terms, viz: One third of the purchase money to be paid in ad-

**Terms of sale.**

vance, and the balance on a credit not exceeding ten years, bearing interest at the rate of ten per cent per annum, from the day of the sale until paid, which interest shall be payable annually at the office of the county Treasurer of said county, on the first day of January of each and every year, *Provided*, always, that the said lands appraised as aforesaid shall not be sold for less than their appraised value; and provided also, that the said county Judge receive, when desired by the purchaser, the whole of the purchase money in advance; and provided also, that neither the county Judge nor any township trustee of the township in which any land so sold may be situated, nor any person having anything to do with the allotment or appraisal thereof, shall be either directly or indirectly interested in any purchase of the same, and in case the persons above enumerated shall be either directly or indirectly interested in such purchase, then said sale is hereby declared to be void and of no effect.

Officers cannot buy.

Sec. 13. If any purchaser shall pay the whole amount of the purchase money at the time of the purchase, the county Judge shall forthwith issue a certificate of purchase setting forth that fact which shall be transmitted to the State land office, and entitle the purchaser to a patent which shall be issued by the Governor.

Patent issued.

Sec. 14. In case the lands are purchased upon a partial credit as hereinafter authorized, the contract of purchase shall be immediately reduced to writing, signed by the parties and filed and recorded in the office of said county Treasurer, and during the continuance of such contract, it shall be lawful for such purchaser, his assignee or heir, at any time to pay the principal and interest due upon such contract, and receive a certificate of purchase as mentioned in the preceding section.

Bonds for deeds signed and recorded.

Sec. 15. When in the judgment of the county Judge and township trustees, any school lands in the township of the latter which they are about to offer for sale, are of a description as that a sale of the same upon a partial credit would be unsafe or incompatible with the interest of the school fund, and the preservation thereof from waste and especially in the case of timbered lands, the

Land sold for cash.

Collateral security required.

value whereof consists chiefly in the timber growing thereon; the said county Judge and township trustees may in their discretion exact the whole of the purchase money in advance, or if they sell such land upon a partial credit as hereinbefore prescribed, it shall be their duty to require good collateral security for the payment of the residue of the purchase money upon the terms agreed upon.

Penalty of two per cent a month for non-paym't of interest.

Sec. 16. Whenever any purchaser of any school lands sold under the provisions of this act, who has purchased the same under a partial credit, or any person to whom a portion of the school fund has been loaned fails to pay the interest thereon according to the terms of his contract, on the first day of January, he shall incur a penalty of two per cent upon said interest, and in case he shall fail to pay said interest on or before the first day of February, he shall incur an additional penalty of two per cent on said interest, and in like manner an additional penalty of two per cent shall be incurred for every month any delinquent may fail to pay the interest due from him until the same is paid, and if said interest is not paid at the end of six months, it shall be the duty of the county Treasurer to report the name of the delinquent to the District Attorney of the judicial district in which the county is situated, who shall immediately commence suit for the collection of the said interest.

School lands taxed.

Sec. 17. All those school lands, the sale of which are provided for under this act, shall become taxable in the hands of the purchaser or those who represent him from the time of the execution and delivery of the contract to purchaser.

Condition in contracts.

Sec. 18. All contracts relative to the sale of school lands of every description provided for in this act, shall be subject to the laws that may now or hereafter be in force in this State, relative to the prevention or punishment of waste.

Waste prevent'd.

Sec. 19. It is hereby made the duty of the township trustees in each township to see that no waste be committed upon any school lands lying in the township,

and in case any such waste be attempted it shall be their duty to apply by petition to the District Court or to any Judge thereof for an injunction to stay waste, and the same if granted, shall be without bond and shall stand for trial first in order upon the court docket, the same shall be tried in a summary way, and upon such trial the said township trustees shall be competent witnesses. The court may make such order in the premises as shall be agreeable and calculated to secure the school lands from waste or destruction, and may adjudge damages to the township trustees against the party for injustice done in such cases, the costs shall abide the event of the suit, and the damages shall be paid to the county treasurer, and constitute a part of the permanent school fund. Waste punished.

Sec. 20. The provisions of section nineteen are hereby made applicable to all purchasers of University land and borrowers of money from the University fund. University lands

Sec. 21. It shall be the duty of the Register of the State land office to transmit to the County Judge of each county in which any part of the 500,000 acre grant may be situated, a list of all of said lands in his county with the appraised value of each tract, stating what tracts or parts of tracts have been sold and what remains unsold, and it shall be the duty of the County Judge receiving such lists, forthwith to furnish the trustees of the several townships in his county with a correct list of all the unsold lands in each, and thenceforth it shall be the duty of the County Judge and the township trustees to have the same charge and care of said lands as of section sixteen, as provided in this act, but the account of the proceeds of the sale and the income arising therefrom shall be kept and rendered to the Auditor of State separate from the proceeds and income from section sixteen. Sale of university lands.

Sec. 22. When, in the opinion of the County Judge and township trustees of any township, it may be necessary to have any portion of the school lands stated in this act within any township in his county surveyed, he or they may employ the county Surveyor for the purpose, who shall be paid out of the county treasury upon School lands surveyed.

proof made of the request and performance of the service.

**Fund loaned out.** Sec. 23. The permanent school fund shall be loaned out from time to time as hereinafter provided, as the same may come into the hands of the county treasurer, but no loan to any person or company shall exceed the sum of five hundred dollars, nor shall any loan be made for a less time than one year nor more than five years.

**Security by the loan.** Sec. 24. The payment of the money thus loaned and the interest thereon, shall be secured by promissory note, to be executed by the loanee with two good sureties, and by mortgage on real estate of the clear unincumbered value of double the amount of money loaned, which real estate must be situated in the county where such loan is made.

**Value of security fixed.** Sec. 25. The value of real estate proposed to be given in security for money loaned as herein provided, shall be fixed by three appraisers under oath, to be appointed by the County Judge, who shall be allowed therefor the sum of fifty cents each, to be paid by the loanee, and the loanee shall, in all cases, pay for recording the mortgage taken to secure such loan.

**Manner of making loans.** Sec. 26. When any person or persons wish to effect a loan of the permanent school fund, he or they shall make application to the County Judge of the proper county, and if in the opinion of the said judge, said loan would be to the interest of the school fund, said judge shall order the necessary papers for the security of said loan to be made out as required by section twenty-five of this act, and when said papers are made out, they shall be presented to the said County Judge and if he approves the same he shall endorse thereon the word accepted, and sign his name below the same, and then return the note to the maker or makers thereof, who shall present the same to the county Treasurer of said county, who shall pay to the person presenting it, out of the principal of the permanent school fund in his possession, the amount for which said note calls, and shall file said note among the papers of his office. And said County Judge shall file the mortgage among the papers of his office.

Sec. 27. The office of School Fund Commissioner is hereby declared abolished from and after the first day of October next. Office abolished.

Sec. 28. During the month of October next after the taking effect of this act, each person now holding the office of School Fund Commissioner of each of the several counties of this State shall make a full and complete settlement of the affairs and business of the said office, with the County Judge and Treasurer of his county, and shall deliver to such county Treasurer, all moneys, notes and bonds and assets of every kind and description, and shall deliver all books and mortgages and papers not required to be delivered to the county Treasurer, to the said County Judge. Final settlement of S. F. Comr's.

Sec. 29. Said settlement shall be shown or evidenced by a settlement sheet whereupon shall be entered in proper form a full and accurate account of the doings of such School Fund Commissioner, with the proper debts and credits of principal and interest due from such School Fund Commissioner, said settlement sheet shall also contain a full and accurate list and statement of all books, papers, moneys, notes, bonds, mortgages and assets of every kind and description delivered by such School Fund Commissioner to such County Judge and Treasurer, and to which delivered, which list and statement shall contain a brief and pertinent description of all books, papers, booknotes, bonds, and assets, and also any facts within the knowledge of such School Fund Commissioner, material to the safety of the school fund. Details of settlement.

Sec. 30. In case any books, papers, money, bonds, mortgages, or assets of every kind or description belonging to such School Fund Commissioner, are not in his possession at the time of such settlement, he shall have entered upon the said settlement sheet a brief and pertinent description thereof, with the reasons why the same is not in his possession, and where and how it can be obtained. Books and pap'rs accounted for.

Sec. 31. Said settlement sheet shall be done in a triplicate and signed by such School Commissioner, County Judge and Treasurer, and there shall be ap- Duplicate of settlement made out and signed.

pended to each an affidavit of such School Fund Commissioner stating said settlement sheet contains a full, complete and accurate account of his doings as such School Fund Commissioner, and a complete list of all books, papers, moneys, notes, bonds, mortgages, and assets of every kind and description that pertained to his said office, whether in his possession or within his knowledge material to the safety of the School Fund, one of said settlement sheets shall be delivered to such School Fund Commissioner, one to said County Judge, and the third shall be forwarded to the State Auditor.

**Payments made to Co. Treas'r.**

Sec. 32. From and after the first day of October next after the taking effect of this act, all payment of principal and interest of the school fund shall be made to the county Treasurer of the proper county, and upon the payment of any money to him on account of the school fund, he shall execute duplicate receipts therefor, specifying whether the same is for principal or interest. The person receiving such duplicate receipts shall immediately deliver them to the County Judge, who shall endorse on one of them the words "duplicate surrendered," with his name thereunder written, and shall return it to the person presenting the same, and the other shall be filed among the papers of his office, and no receipt executed by any county Treasurer as aforesaid shall be held as evidence of payment without such endorsement.

**Receipts filed.**

**Co. Treas'r keeps clear account of fund.**

Sec. 33. Each county Treasurer shall immediately, upon receiving any moneys belonging to the school fund, under the provisions of this act, enter upon his books a proper account thereof, distinguishing between principal and interest, and shall also enter thereon all bonds, notes and assets of every kind and description, showing that money is due to the school fund, distinguishing between principal and interest, and so from time to time, so that he shall at all times have on his books a clear and intelligible statement of the school fund in his hands, and said books shall at all times be opened to the inspection or examination of any householder or tax-payer in his county.

Sec. 34. Each County Judge shall keep in his office an account with the Treasurer of his county, charging thereon all moneys, notes, bonds and assets of every kind and description delivered to such Treasurer by the School Fund Commissioner as hereinbefore provided, and all moneys paid to such Treasurers as shown by receipts presented for endorsement as hereinbefore distinguishing between principal and interest, and shall on the first day of February of each year make a complete settlement with such Treasurer, of such school fund account. Said account shall at all times be open to the inspection and examination of any householder or tax payer of his county.

Co Judge keeps papers and settles with Treas'r

Sec. 35. If upon settlement with any Fund Commissioner as herein provided, it shall be ascertained that he or any of his predecessors in office are defaulters to the school fund, the County Judge and Treasurer of the county shall give the necessary information and papers to the District Attorney of that Judicial District, whose duty it shall be to prosecute the necessary suit or suits for the amount of the defalcation, if in his opinion the same can be recovered by such proceedings, and if he should be of opinion such recovery cannot be had he shall file with such County Judge his written opinion to that effect, and his reasons for that opinion.

Defaulting Commissioners dealt with.

Sec. 36. If in any county the office of School Fund Commissioner shall be vacated at the time when this act takes effect, the Treasurer and Judge of such county shall immediately take such steps as they may deem necessary to reduce to their possession all books, papers, moneys, notes, bonds, mortgages, and assets of every description belonging to such vacant office, and for that purpose shall have power to prosecute such suit or suits as the District Attorney for such county may deem necessary. A written statement of all books, papers, moneys, notes, bonds, mortgages, and assets so reduced to possession by Such Treasurer and Judge shall be made by such Treasurer and County Judge of such county similar in substance to the settlement sheet hereinbefore required, which shall be done in duplicate, signed by such Treas-

Possession of papers.

Statement filed.

urer and County Judge, and verified by their affidavits, one of which shall be deposited with such County Judge, the other forwarded to the Auditor of State as hereinbefore provided.

Failure to settle provided for.

Sec. 37. If any School Fund Commissioner shall neglect or refuse to make the settlement as herein provided, the Treasurer and County Judge of such county shall proceed as is provided in section thirty-six, in cases wherein the office of School Fund Commissioner is vacant or the Commissioner neglects or refuses to make settlement as herein provided, the County Treasurer shall cause suit to be brought on the official bond of such Commissioner, unless the Prosecuting Attorney or District Attorney for the county shall be of opinion that such suit will be useless, in which case such attorney shall file with the County Judge his opinion in writing, with his reasons therefor.

Sup't delivers up records.

Sec. 38. It is hereby made the duty of the Superintendent of Public Instruction to transfer to the Auditor of State all books, papers, and documents relating to the school fund now remaining in his office, and to transfer to the Register of the State Land Office all books, papers and documents relating to the School and University land.

Take effect.

Sec. 39. This act shall take effect and be in force from and after its publication in the Iowa Citizen and Iowa State Journal.

Approved March 23d, 1858.

I hereby certify that the foregoing Act was published in the Iowa Citizen on the 7th day of April, 1858, and in the Iowa State Journal on the 8d day of April, 1858.

ELIJAH SELLS,  
Secretary of State.

## CHAPTER 159.

### FILLING OF OFFICES.

AN ACT revising and amending title IV of the Code and further providing for elections, filling vacancies in office, resignations and contesting elections.

General election established.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That there shall be held throughout